

United States
Circuit Court of Appeals *(d)*
For the Ninth Circuit.

LAURA A. BOOMER,

Appellant,

vs.

JAMES H. ROWE,

Appellee.

Transcript of Record.

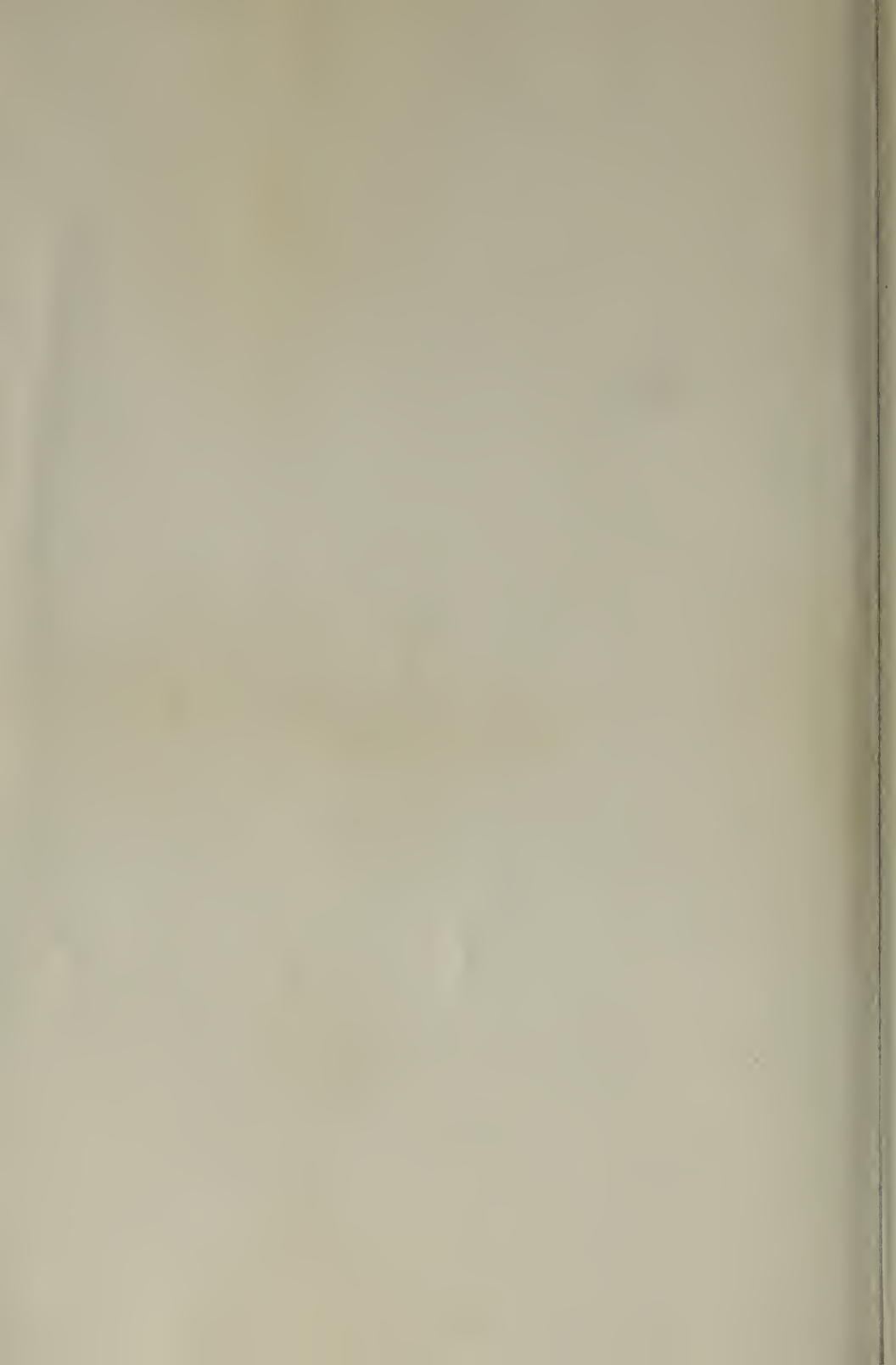
Upon Appeal from the United States District Court
of the District of Montana.

FILED

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F. D. MONCKTON,

CLERK



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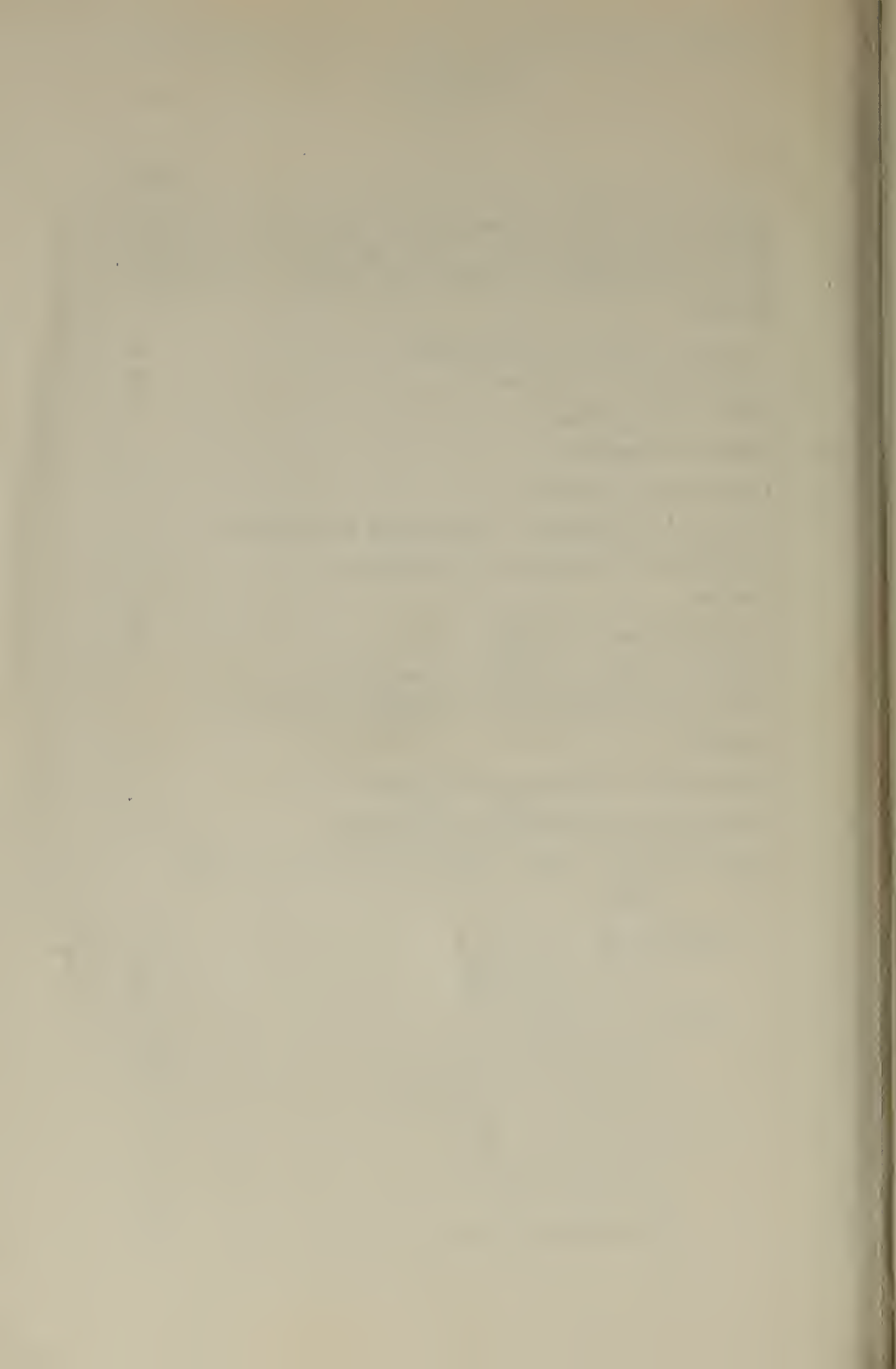


INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

Page

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

Answer to Bill of Complaint.....	10
Assignment of Errors.....	20
Bill of Complaint.....	2
Bond on Appeal.....	23
Citation on Appeal.....	25
Clerk's Certificate to Transcript of Record....	48
Condensed Statement of Evidence.....	27
Decree.....	19
Memorandum Decision.....	14
Motion to Dismiss Bill of Complaint.....	8
Names and Addresses of Solicitors of Record..	1
Opinion.....	14
Petition for Allowance of Appeal.....	21
Praeceptum for Transcript of Record.....	47
TESTIMONY ON BEHALF OF PLAINTIFF:	
BOOMER, H. H.....	39
Cross-examination... ..	39
ROWE, JAMES H.....	31
Cross-examination... ..	33
Redirect Examination.....	36
WHITCOMB, E. W.....	27
Cross-examination... ..	30
Recalled.....	37
Cross-examination... ..	37



[1*] Names and Addresses of Solicitors of Record.

JOHN O. DAVIES, Butte, Montana,

MAURY & WHEELER, Butte, Montana,

Solicitors for Complainant.

JESSE B. ROOTE, HENRY C. HOPKINS, ENOS

E. ALLEY and J. A. POORE, Butte, Montana;

Solicitors for Defendant.

*In the District Court of the United States, for the
District of Montana.*

IN EQUITY—No. 41.

LAURA A. BOOMER,

Complainant,

vs.

JAMES H. ROWE,

Defendant.

BE IT REMEMBERED that on the 8th day of July, 1916, Bill of Complaint was filed herein, which is in the words and figures as follows, to wit:

[2] *In the District Court of the United States, in
and for the District of Montana.*

IN EQUITY.

LAURA A. BOOMER,

Plaintiff,

vs.

JAMES H. ROWE,

Defendant.

*Page-number appearing at top of page of original certified Transcript.
of Record.

Bill of Complaint.

To the Honorable the Judges of the Above-entitled Court:

The plaintiff, your orator, a citizen of the State of Washington, residing at Spokane, Washington, brings this bill of complaint in equity against the defendant, a citizen of Montana, and for a cause of action where the amount involved is more than three thousand (\$3,000.00) dollars, and thereupon your orator, in behalf of herself and all other parties similarly situated who desire to come in or intervene, complaining, alleges:

1.

That Laura A. Boomer, the complainant, at all times herein mentioned, was and now is a citizen of the State of Washington.

2.

[3] That James H. Rowe, defendant, at all times herein mentioned was and now is a citizen of the State of Montana.

3.

That the amount involved in this suit in equity, exclusive of interest and costs, is more than the sum of three thousand (\$3,000.00) dollars.

4.

Further your orator alleges that at one time, and before the dissolution by insolvency as hereinafter set out, of all of its property, there existed a corporation organized and then existing under and by virtue of the laws of the State of Montana, known as and

called Salmon Land Company, with principal office in Butte, Montana.

5.

That there was never issued of the capital stock of said Salmon Land Company more than the amount of one thousand (1,000) shares of the par value of ten (\$10.00) dollars per share; that there was never subscribed by any person or any persons or any corporation during the life of the said Salmon Land Company or at all, more than the said amount of one thousand (1,000) shares; nor was any money more than the sum of ten thousand (\$10,000) dollars for the said one thousand (1,000) shares so subscribed and so issued ever paid in for capital stock of any kind to the said Salmon Land Company.

6.

[4] That on or about the 14th day of April, A. D. 1910, James H. Rowe, being then a director of said Salmon Land Company, the said James H. Rowe being then also secretary of the said Salmon Land Company, caused the said Salmon Land Company to become indebted in a sum in excess of its said capital stock then issued or subscribed, to wit, in the sum of twenty thousand five hundred and twenty and $73/100$ (\$20,520.73) dollars; and the said James H. Rowe, with other directors, for a valuable consideration proceeding from Laura A. Boomer, this plaintiff, to said Salmon Land Company, did make, execute and deliver to the said Laura A. Boomer, a certain promissory note in words and figures as follows, to wit:

"\$20,520.73 Butte, Montana, April 14th, 1910.

For value received, we, Salmon Land Company, a corporation, promise to pay to the order of Laura A. Boomer, twenty thousand five hundred and twenty and 73/100 (\$20,520.73) dollars on or before five years from this date, at the First National Bank of Butte, Montana, with interest at eight per cent per annum until fully paid, reserving the right to pay installments of said sum at any time of any amount, and whenever so paid interest on the amount shall cease. Interest payable annually.

SALMON LAND COMPANY,

By CHARLES CADY,

President.

JAMES H. ROWE, Secretary."

And they, the said Salmon Land Company and all its directors, including said James H. Rowe, did at the same time make, execute and deliver a certain indenture of mortgage to secure the said promissory note, and the same was delivered to the said Laura A. Boomer, and said Salmon Land Company was caused to deliver the same by its directors including James [5] H. Rowe; and the said indenture of mortgage did provide among other things, that "in case default shall be made in the payment of the said principal sum of money or any part thereof as provided in said note, or if the interest be not paid as herein specified, then and from thenceforth it shall be optional with the said party of the second part, her executors, administrators or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable, although

the time expressed in said note for the payment thereof shall not have arrived."

7.

That said Salmon Land Company did default in the payment of the interest which thereafter accrued on said note, and failed entirely to pay the same.

8.

That Laura A. Boomer, this plaintiff on March 17th, 1913, and after such default had been made, did consider the whole of the said principal sum due and unpaid, and both the same are entirely unpaid save as hereinafter set out; and thereupon she did commence in the District Court of the Sixth Judicial District of Idaho, in and for the County of Lemhi, her certain suit for the foreclosure of the said note for a judgment on the said note, both as to its principal and interest, and for the attorney's fees provided in the said mortgage in the event of suit thereon.

9.

[6] That the defendant Salmon Land Company duly and regularly appeared in the said suit by an attorney at law admitted in all the courts of Idaho, one A. C. Sherry, he being by said Salmon Land Company duly authorized so to do.

10.

And thereafter such proceedings were had, to wit, that on or about the 30th day of December, 1913, there was by the said court duly made and entered a certain judgment, and there was by the said Court duly made and entered on or about the said day a certain decree of foreclosure of the mortgage

hereinbefore mentioned, and given to secure the said promissory note hereinbefore set out; and thereafter, and on the 30th day of January, 1914, the sheriff of the said county sold to the highest bidder for cash, after due and legal notices of same as required by the laws of Idaho, all of the property, real and otherwise, described in and incumbered by the said mortgage, the highest price bid, and the highest bid accepted by the said sheriff for the said property was the sum of twenty thousand and five hundred (\$20,500.00) dollars; that the legal expense of said sale by sheriff was one hundred and forty-six and 50/100 (\$146.50) dollars; that the amount unpaid of said judgment instantly before said sale was twenty-five thousand four hundred and sixty-three and 10/100 (\$25,463.10) dollars; that the deficiency of the said bid (less said costs of sale) from said amount of judgment was immediately after said sale, [7] the sum of four thousand nine hundred and sixty-three and 10/100 (\$4,963.10) dollars, no part of which has ever been paid.

11.

That Laura A. Boomer is the owner and holder of said judgment.

12.

That Salmon Land Company became and was on January 30th, 1914, and ever since has been entirely insolvent. It has no property of any kind whatsoever that is of any value at all; that it has entirely ceased to do business. It is thereby dissolved.

13.

That as to how many other parties there are, if

any, similarly situated as the plaintiff,—that is, creditors of the said Salmon Land Company, and entitled to recover against the defendant by reason of the aforesaid acts of the defendant and other acts of a similar nature, if any, this plaintiff does not know and is unable to state to the court.

WHEREFORE your orator prays judgment against the defendant that she have and recover of and from the defendant the sum of four thousand nine hundred and sixty-three and 10/100 (\$4,963.10) dollars, with interest thereon at the rate of eight per cent per annum from the 31st day of January, 1914, until paid; or so much thereof as the plaintiff is entitled to if plaintiff cannot be paid in full, after other [8] persons similarly situated with the plaintiff have received their just proportion of the amount due and owing from the defendant to the plaintiff and other persons similarly situated as herself.

That the defendant be required to set forth the names and amounts due all creditors of the Salmon Land Company similarly situated as the plaintiff, and give a just and true account to this court at the trial of the case of all similar transactions as the ones set forth in this bill, and the names and residences of all creditors of the Salmon Land Company similarly situated as the plaintiff, and the amounts due each and all of them.

That a subpoena issue to the defendant compelling him to answer plaintiff's bill of complaint; and that your orator recover her costs against the defendant; and for such other and further relief as to the

court may seem meet and equitable.

JOHN L. TEMPLEMAN,
LOWNDES MAURY,
J. O. DAVIES,
Solicitors for Complainant.

[Endorsed]: Title of Court and Cause. Bill of Complaint. Filed July 8, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy.

MAURY, TEMPLEMAN & DAVIES,
Attorneys for Plaintiff.

[9] And thereafter, on the 28th day of July, 1916, Motion to Dismiss Bill of Complaint was filed herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

IN EQUITY—No. 41.

LAURA A. BOOMER,

Plaintiff,

vs.

JAMES H. ROWE,

Defendant.

Motion to Dismiss Bill of Complaint.

Now comes the defendant, James H. Rowe, above named, and moves the Court to dismiss the bill of complaint herein for the following reasons and on the following grounds:

(a) That the facts stated in said bill of complaint do not entitle the plaintiff to the relief prayed for, or to any relief, in the above-entitled court.

(b) That, on the facts stated in said bill of complaint, the above-entitled court is without jurisdiction to try said cause.

ROOTE & HOPKINS, and
ENOS E. ALLEY,

Attorneys for Moving Defendant.

Service of the above and foregoing Motion to Dismiss the Bill of Complaint is hereby acknowledged, and copy thereof received, this 28th day of July, A. D. 1916.

LOWNDES MAURY,
JOHN L. TEMPLEMAN,
J. O. DAVIES,

Solicitors for Complainant.

[Endorsed]: Title of Court and Cause. Motion to Dismiss Bill of Complaint. Filed July 28, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy.

ROOTE & HOPKINS and ENOS E. ALLEY,
Attorneys for Moving Defendant.

[10] And thereafter, on the 27th day of November, 1916, Answer to Bill of Complaint was filed herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

IN EQUITY.

LAURA A. BOOMER,

Plaintiff,

vs.

JAMES H. ROWE,

Defendant.

Answer to Bill of Complaint.

The defendant herein, James H. Rowe, makes the following answer to the Bill of Complaint herein filed by the plaintiff, Laura A. Boomer, to wit:

I.

The defendant says that this suit in equity ought not to be maintained by the plaintiff for the following reasons:

(a) Because the facts and things alleged in the Bill of Complaint are not sufficient to warrant the Court in giving judgment against the defendant herein or to order an accounting of the matters and things set out and mentioned in said Bill of Complaint.

(b) Because by the plaintiff's Bill of Complaint she seeks to recover upon a statutory action which can be prosecuted only in an action at law, and not in a suit in equity. This suit is brought under the provisions of Section 3837 of the Revised Codes of Montana of 1907.

(c) Because in the absence of Section 3837 of the Revised Codes of Montana of 1907 the plaintiff herein would have no cause of action whatever either at law or in equity; and this suit is brought solely under the provisions of said statute of the State of Montana, which statute does not authorize or warrant the Court in awarding an accounting of any kind whatever, but only authorizes the recovery of the alleged debt, in an action at law. Therefore, [11] this suit is brought on the wrong side of the

court, and for this reason the said Bill of Complaint should be dismissed.

II.

The defendant admits the allegations set out in paragraphs numbered 1, 2, 3, 7, 8, and 9 of said Bill of Complaint.

With reference to statements set out in paragraph numbered 4 of the Bill of Complaint the defendant says that the corporation referred to therein and known as and called Salmon Land Company is not now and never has been dissolved but is still in existence.

III.

The defendant admits so much of the allegations in paragraph numbered 5 of the said Bill of Complaint as refer to the amount of capital stock of the said Salmon Land Company that has been issued and admits that no more than Ten Thousand Dollars, par value of said capital stock was ever issued.

The defendant admits that on or about the 14th day of April, 1910, the said Salmon Land Company made, executed and delivered to the plaintiff herein the note of the said Salmon Land Company according to the tenor and effect of the copy of said note set forth in said Bill of Complaint. In this connection defendant, in explanation of the issuance of said note, avers that the said note was given by the said Salmon Land Company to the plaintiff herein as evidence of the indebtedness of the said Salmon Land Company to the plaintiff for a part of the purchase price of certain land in the State of Idaho; that contemporaneous with the giving of said note

the said Salmon Land Company, a corporation, also executed a mortgage on the same land to secure the payment of the said note; that the said mortgage was by the plaintiff foreclosed in the District Court of Lemhi, Idaho, and sold under a decree of foreclosure of said court, foreclosing said mortgage, and the said land was at said sale purchased by the plaintiff herein who is now and ever since has been in possession of the said land. The defendant denies that he, with other directors, or at all made, executed [12] or delivered any note to the plaintiff herein, but that the note was the note of the said Salmon Land Company, and not of this defendant. The defendant admits that the mortgage referred to in said Bill of Complaint was made, executed and delivered, as alleged therein, by the said Salmon Land Company; and the defendant also admits that said Salmon Land Company made default in the complaint thereof.

IV.

With reference to the allegations set forth in paragraph numbered 10 of the said Bill of Complaint this defendant admits that a suit was brought by the plaintiff as alleged therein, to foreclose the mortgage referred to in said Bill of Complaint, but avers that he is without knowledge as to the date when the suit was commenced and without knowledge of the date of the decree therein and the terms of the decree, and is without knowledge of the amount of the judgment or decree and costs, and is without knowledge of the amount of the deficiency judgment therein, if any exists, or has existed.

V.

The defendant herein denies that the said Salmon Land Company, the corporation referred to in the plaintiff's Bill of Complaint, is now or ever has been dissolved, but, on the contrary, alleges that the said corporation still exists and has existed as a corporation at all times since its creation.

VI.

With reference to the prayer of the plaintiff's said Bill of Complaint this defendant says that upon the face of the said Bill of Complaint the plaintiff is not entitled to an accounting such as asked for in the prayer of her said Bill of Complaint, nor to any accounting whatever. And this defendant further says that the plaintiff herein has no cause of action either at law or in equity because of the matters and things set up in the said Bill of Complaint for the reason that the said Salmon Land Company is not now and never has been dissolved, but is still in existence.

[13] WHEREFORE, the defendant herein prays that the plaintiff's Bill of Complaint be dismissed; that she take nothing by her said suit and that this defendant may be permitted to go hence without day, with his costs in this behalf laid out and expended.

JESSE B. ROOTE,

Attorney for Defendant.

Service of above and foregoing answer acknowledged and copy received Nov. 27th, '16.

MAURY, TEMPLEMAN & DAVIES,

Attys. for Plaintiffs.

[Endorsed]: Title of Court and Cause. Answer to Bill of Complaint. Filed Nov. 27, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk.

[14] And thereafter, on the 1st day of August, 1917, Decision of the Court was filed herein, which is as follows, to wit:

United States District Court, Montana.

LAURA A. BOOMER

vs.

JAMES H. ROWE.

Memorandum Decision.

Plaintiff, creditor of a Montana corporation, for herself and other creditors, sues defendant, director of the corporation, to recover for that as a director he caused the corporation to become indebted in excess of the subscribed stock, contrary to statute. She alleges that for more than two years the corporation has been and now is "insolvent, . . . has entirely ceased to do business," and "it is thereby dissolved." The answer pleads lack of jurisdiction in equity, and that the corporation has not been dissolved.

Section 3837, R. C. Montana, provides amongst other things that the directors must not do certain things, "nor must they create debts beyond their subscribed capital stock. . . . For a violation" thereof the directors responsible "are, in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof, in the event of its dissolution, to the full

amount of the . . . debt contracted; and no statute of limitations is a bar to any suit" therefor.

The suit is well brought, equity alone furnishing an adequate remedy.

Stone vs. Chisohm, 113 U. S. 308.

Lyman vs. Hilliard, 154 Fed. 339.

It appears the incorporation is of 1910, for twenty years, [15] for all business purposes. The directors including defendant incurred the debt sued for, and in excess of the subscribed capital stock, Jan. 30, 1914, all its property was sold at sheriff's sale. It has no property, is insolvent, and transacts no business. Its last annual report was filed Jan. 20, 1916, from which it appears its officers were the same as the previous year. Defendant is director now and from the beginning and secretary now and for at least four years. In said report is a recital that the "corporation has ceased to be a going concern and has ceased to voluntarily incur financial obligations because of its insolvency," the local law providing that thereafter directors "shall not be liable for a failure to file annual reports during such time as the disability of such corporation shall continue." Contending the corporation is dissolved within said section 3837, plaintiff cites McDonald vs. Ins. Co. (Al.), 5 So. 120, and other Alabama cases.

Done vs. Jones, 61 Me. 160.

Gibbs vs. Davis, (Fla.), 8 So. 633.

Perry vs. Turner, 55 Mo. 418, and other Missouri cases:

Slee vs. Bloom, 19 Johns. 456.

These are cases wherein statutes imposed upon stockholders a contractual liability to creditors for debts of the corporation dissolved,—very different from section 3837, *supra*, which imposes an obligation upon directors, penal in its nature (see *Moss vs. Smith* (Cal.), 155 Pac. 90.), in favor (1) of the corporation, (2) of creditors in the event of [16] dissolution.

It is worthy of note that the leading case, *Slee vs. Bloom*, involves a situation wherein the stockholders had acted upon a resolution to refrain from further elections and to abandon the property and corporation. They intended to and did abandon all corporate property and franchise rights. The bill in substance charged all this and also that the corporation was dissolved, none of which was denied by defendants. America's greatest chancellor, Kent, dismissed the bill for that the corporation was not dissolved within the meaning of the statute.

He was reversed by a court composed mainly of lay Judges, the Senate of New York, possibly more sensitive to the even then rising tide of popular feeling anent corporations. It is submitted that Kent's reasoning and conclusion are the better. And it is noted that the reversal counts much upon mistaken analogy between common law and canon law so-called corporations sole and more ecclesiastical than lay, and statutory business corporations aggregate, and also proceeds upon failure to distinguish between the condition of the corporation which would authorize the crown in behalf of rights of the Government to there create a new corporation, and the

condition which would defeat the personal privileges of the members of the corporation. Furthermore, the construction was induced by anxiety to [17] furnish a prompt remedy, where otherwise was none or one that might be defeated by time. Limitations were not barred as in the statute of the instant suit, and no right of action was given the corporation which might furnish a remedy to creditors, as in the statutes here. *Ex necessitate*, potent there, is absent here.

The great chancellor in his Commentaries recognizes that the doctrine of *Slee vs. Bloom* is more judicial than legislative, and mildly observes that it "is not to be carried beyond the precise facts on which it rested." Its general statements, however, have been seized upon, its limitations ignored, to expand the doctrine so far that now in assumed application of it to cases involving statutes like Montana's, courts have gone so far as to declare that corporations are dissolved within the intent of the statute, "by insolvency or cessation of business."

Stoltz vs. Scott (Idaho), 129 Pac. 342.

The Montana statute confers the right of action (1) upon the corporation for all the excess debt even though it be not damaged and recovery not necessary for creditors' protection, and (2) upon the creditors for less than the excess debt if sufficient to satisfy their claims, and only upon the happening of a contingency—dissolution of the corporation. The creditors' right arises only when the corporation's expires, viz., when it is so far dissolved that it has no capacity to sue. This corporation has capacity

to sue. It [18] might now sue defendant for the excess debt, and recovery would not be barred by recovery in this suit. For the corporation cannot be concluded in the matter of its property or right of action, by a suit to which it is not a party. Nor is defendant subject to a double liability. The statute imposes none such. Given by statute, creditors take the right subject to the contingency. Nothing in the statute indicates the legislature intended dissolution in other than its ordinary sense, the approved usage of the word elsewhere in the codes, viz., death of the corporation. Failure of election, inactivity or cessation of business "on account of insolvency or for any other reason." are covered by code provisions guarding against dissolution thereby and contemplating future elections, business, solvency.

Other and the usual remedies are available to creditors of inactive and insolvent but not dissolved corporations, obviating necessity for judicial construction to create a right and remedy where the legislature has not. See *Appleton vs. Co.*, (N. J. Eq.) 54 At. 454. The statute has not been construed by the Supreme Court of this State. If the legislature had intended a new right and remedy before dissolution in the approved usage of the word, it is believed it would have plainly said so. The statutory right of action is the corporation's, it is not dissolved within the meaning of the statute; plaintiff has not the right herein asserted, and the suit is dismissed.

BOURQUIN, J.

[Endorsed:] Title of Court and Cause. Memo.
Filed Aug. 1st, 1917. Geo. W. Sproule, Clerk.

[19] And thereafter, on the 17th day of August, 1917, Decree was filed and entered herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

LAURA A. BOOMER,

Plaintiff,

vs.

JAMES H. ROWE,

Defendant.

Decree.

This cause coming on regularly to be heard before the above-entitled court on the 26th day of May, 1917, Messrs. H. L. Maury and J. O. Davies appearing as counsel for the plaintiff, and Mr. Jesse B. Roote appearing as counsel for the defendant, and evidence having been produced on behalf of the plaintiff and defendant, and the cause argued and submitted to the Court for decision, and the Court being fully advised as to the law and the facts:

It is ORDERED, ADJUDGED AND DECREED that plaintiff take nothing from defendant by reason of her alleged cause of action, and that plaintiff's alleged cause of action be and the same is hereby dismissed, and that defendant have judgment for his costs, taxed at the sum of Thirty-four Dollars.

Dated this 17 day of August, 1917.

BOURQUIN,
Judge.

[Endorsed]: Title of Court and Cause. Decree. Filed and entered Aug. 17, 1917. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy.

[20] And thereafter, on the 30th day of August, 1917, Assignment of Errors was filed herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

LAURA A. BOOMER,

Plaintiff,

vs.

JAMES H. ROWE,

Defendant.

Assignment of Errors.

Now comes the plaintiff above-named by his solicitors and says: That in the decision of the said cause of the 1st day of August, A. D. 1917, the Court erred in the following particulars; The Court erred in finding that Salmon Land Company had not been dissolved and in thereby dismissing the action.

WHEREFORE, the said plaintiff, Laura A. Boomer, prays that the said decree of said District Court of the United States for the District of Montana, be reversed.

JOHN O. DAVIES,
MAURY & WHEELER,
Solicitors for Plaintiff.

Service of the above assignment of errors admitted

and copy thereof received this 30 day of August, 1917.

J. A. POORE,
Solicitors for Defendant.

[Endorsed]: Title of Court and Cause. Assignment of Errors. Filed Aug. 30, 1917. Geo. W. Sproule, Clerk. By H. H. Walker, Deputy.

JOHN O. DAVIES,
MAURY and WHEELER,
Attorneys for Plaintiff.

[21] And thereafter, on the 30th day of August, 1916, Petition for Allowance of Appeal was filed herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

LAURA A. BOOMER,
Plaintiff,

vs.

JAMES H. ROWE,
Defendant.

Petition for Allowance of Appeal.

The above-named plaintiff, Laura A. Boomer, conceiving herself aggrieved by the decree entered in the above-entitled court on the 17th day of August, 1917, in the above-entitled cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herewith, and she prays that an appeal be allowed

and that a citation issue as provided by law, and that a transcript of the records and proceedings upon which said decree was based duly authenticated may be sent to the said Circuit Court of Appeals for the Ninth Circuit, and your petitioner further prays that a proper order touching the security to be required by her to effect the appeal be made.

JOHN O. DAVIES,
MAURY & WHEELER,
Attorneys for Plaintiff.

The foregoing petition is hereby granted, and the [22] appeal is hereby allowed this 30 day of August, 1917, and the bond on appeal is hereby fixed in the sum of 300 Dollars.

BOURQUIN,
District Judge.

Service of the foregoing petition for appeal and allowance thereof and copy acknowledged as received this 30th day of August, 1917.

J. A. POORE,
Solicitors for Defendant.

[Endorsed]: Title of Court and Cause. Petition for Allowance of Appeal. Filed Aug. 30, 1917. Geo. W. Sproule, Clerk. By H. H. Walker, Deputy.

JOHN O. DAVIES,
MAURY and WHEELER,
Attorneys for Plaintiff.

[23] And thereafter, on the 30th day of August, 1916, Bond on Appeal was filed herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

LAURA A. BOOMER,

Plaintiff,

vs.

JAMES H. ROWE,

Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Laura A. Boomer, as principal, and Andrew J. Davis and J. S. Dutton, as sureties, are held and firmly bound unto James H. Rowe, in the sum of Three Hundred Dollars, the payment of which well and truly to be made we bind ourselves jointly and severally and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals this 29th day of August, 1917.

WHEREAS, the above-named plaintiff has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered and entered in the above-entitled cause in the United States District Court, for the District of Montana on the 29th day of August, 1917.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Laura A.

Boomer, plaintiff [24] shall prosecute her said appeal to effect and shall answer all damages and costs that may be awarded against her, if she fails to make good her plea, then the above obligation is to be void, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, we have hereunto set our hands this 29th day of August, 1917.

LAURA A. BOOMER,

Per J. O. DAVIES,

Principal.

ANDREW J. DAVIS.

J. S. DUTTON.

State of Montana,

County of Silver Bow,—ss.

Andrew J. Davis and J. S. Dutton, sureties on the foregoing bond, being severally sworn, each for himself, says: That he is a resident and freeholder within this State, and is worth the sum specified in the foregoing bond as the penalty thereof over and above all his just debts and liabilities and exclusive of property exempt from execution.

ANDREW J. DAVIS.

J. S. DUTTON.

Subscribed and sworn to before me this 29th day of August, 1917.

[Notarial Seal]

J. A. POORE,

Notary Public for the State of Montana Residing at
Butte, Montana.

My Commission expires Dec. 29, 1918.

The foregoing bond on appeal is hereby approved this 30 day of August, 1917.

BOURQUIN,
District Judge.

Service of the foregoing bond on appeal acknowledged and approved and copy thereof received this 30 day of August, 1917.

J. A. POORE,
Solicitors for Defendant.

[25] [Endorsed]: Title of Court and Cause. Bond on Appeal. Filed Aug. 30, 1917. Geo. W. Sproule, Clerk. By H. H. Walker, Deputy.

JOHN O. DAVIES,
MAURY and WHEELER,
Attorneys for Plaintiff.

[26] *In the District of the United States, for the District of Montana.*

LAURA A. BOOMER,
Plaintiff,

vs.

JAMES H. ROWE,
Defendant.

Citation on Appeal.

The President of the United States to James H. Rowe, Defendant, and to Messrs. Jesse B. Roote, Henry C. Hopkins, Enos Alley and J. A. Poore, his Solicitors, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of

Appeals for the Ninth Circuit at the City of San Francisco, State of California within thirty (30) days from the date hereof, pursuant to an appeal filed in the United States District Court, for the District of Montana, wherein Laura A. Boomer, is appellant and James H. Rowe, is appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable GEORGE M. BOURQUIN, District Judge, of the United States in and for the District of Montana, this 30 day of August, 1917.

BOURQUIN,
District Judge.

Service of the foregoing Citation on Appeal acknowledged and copy thereof received this 30th day of August, 1917.

J. A. POORE,
Solicitors for Defendant.

[27] [Endorsed]: No. 41. In the District Court of the United States, in and for the District of Montana. Laura A. Boomer, Plaintiff, vs. James H. Rowe, Defendant. Citation on Appeal. Filed Aug. 30, 1917. Geo. W. Sproule, Clerk. By H. H. Walker, Deputy.

JOHN O. DAVIES,
MAURY and WHEELER,
Attorneys for Plaintiff.

[28] And thereafter, on the 12th day of September, 1917, Condensed Statement of Evidence was approved, certified and filed herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

LAURA A. BOOMER,

Complainant,

vs.

JAMES H. ROWE,

Defendant.

Condensed Statement of Evidence.

Appearances for complainant, John O. Davies, Maury and Wheeler, and for defendant, Messrs. Jesse B. Roote, Henry C. Hopkins, Enos Alley and J. A. Poore.

Testimony of E. W. Whitcomb, for the Plaintiff.

[29] E. W. WHITCOMB, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

(By Mr. MAURY.)

The WITNESS.—My name is E. W. Whitcomb; I am a lawyer, reside at Salmon, Idaho, and have practiced my profession about twenty-seven years; am admitted to practice in all of the courts of Idaho and the federal court sitting in that jurisdiction. I was attorney for Laura A. Boomer in a suit in the

(Testimony of E. W. Whitcomb.)

Sixth Judicial District of Idaho in and for Lemhi County, entitled *Laura A. Boomer versus Salmon Land Company*; I commenced the proceeding and continued actively through the case until the end. I recently examined and compared certain copies of the proceedings in that cause; it was on last Wednesday. I recognize the judgment-roll, marked plaintiff's number 2; I brought it over with me and recognize it for certain reasons; it is the paper I had with me. This is the judgment-roll and I compared it with the original judgment-roll in that court, went clear through the whole of it with the assistants that I had there and it is correct; it is a correct copy of the judgment-roll in that court. I was present at a sale of certain lands of the Salmon Land Company. This is a copy of the order of sale given in that suit; I have made comparison of that with the [30] original, which I made at the same time I made the other comparison. This is the return on that sale of the sheriff of Lemhi County, Idaho, and I examined this with the original return and this is a correct copy. I was present at the sale made by the sheriff, mentioned in Exhibit Number 3. The sheriff's return states exactly what transpired there; the amount bid, as shown in there, is correct, and also the land as shown there; all the features of his return are correct; I know that positively, because I checked it up immediately after he made it; I know it for two reasons, because I checked it then and since, and the facts are set forth in this exhibit that

(Testimony of E. W. Whitcomb.)

I brought from Idaho myself. Subsequent to that sheriff's sale I procured a deed to the property for my client; this is the original deed. There has been a subsequent payment of \$659.00. I have a certified copy of a record of mortgage from the Auditor and Recorder, the mortgage on which that suit that you referred to was brought; I made a comparison of it with the record; I could not find the original mortgage. I can say further regarding this copy of the mortgage that I tried to get the original mortgage and I could not find it; I don't know where it is now, but I had the original mortgage in my office at the time I drew the complaint, and I compared the original mortgage with the complaint which I drew, and I kept a copy in my office, and to be sure that this was right I compared it with the copy which I had. [31] I found on the records of Lemhi County and in the custody of the Auditor and Recorder, an instrument purporting to be a copy of a directors' meeting of the Salmon Land Company and have a copy of it with me, which I compared with the record after it was taken off, which is true and correct. I have never had any transaction with Mr. Rowe on the promissory note which you hand me; I was attorney for the collection of the note. The deficiency judgment shows exactly the amount due on this note; the \$659.00 was paid afterwards; the instrument of which I am speaking is Plaintiff's Exhibit 5. There was a payment made there after the property was sold, which is shown on this exhibit, which amounted

(Testimony of E. W. Whitcomb.)

at that time to \$659.39; that was by an officer of the court who had this property in charge, and that is the return he made; so far as I have been concerned with the note that sum of \$659.39 has been paid; the papers show there was a bid of some twenty thousand odd dollars for the property.

Mr. ROOTE.—We admit the note.

Cross-examination.

(By Mr. ROOTE.)

The WITNESS.—I was present at the sale of the land under the foreclosure; I bid it in for my client, Laura A. Boomer, the plaintiff in this suit; I was her attorney in the foreclosure, [32] and I bid in the property at the sheriff's sale for her, and had the sheriff make a deed to her, that is the way I remember it; I know the vicinity where this land is; I don't know the land itself, but I know about where it is. It would only be a guess on my part whether this is the same land that Mrs. Boomer previously deeded to the Salmon Land Company; if I drew the mortgage I have forgotten it. Your client might tell you better than I can whether the Salmon Land Company bought a farm or ranch from Mrs. Boomer and gave her this note in payment for the balance of the purchase price, and this mortgage. I cannot remember those things; I know that this land belonged to Peter McKenny originally and I know it was transferred, but I don't know whether I was a party to that transfer or not. The exact method of the transfer I cannot recall. It is in my mind now that

(Testimony of E. W. Whitcomb.)

I did not draw the papers, but I might have; I would not say that I did not; I don't remember ever drawing them at all, still I might have. I know that the land did belong to Peter McKenny and that he occupied it, and I know that he owed Mrs. Boomer and gave her a note and mortgage, and when Peter McKenny sold it to the Salmon Land Company, I think they assumed this mortgage, but I could not swear to it; I think the Land Company took up the old one and gave her a new one—that is my understanding. In making the comparisons of these various copies of documents from the records in Lemhi County, I compared some of the papers [33] myself, and part of them I went over with the deputy recorder there; one of us would read and the other would follow; I think we took turns about; he would read a while and I would follow on the other paper and then I would read and he would follow. It would be hard for me to tell which of those documents we compared in that manner, but some of them we did, and some of them even after they were read over I checked them up alone—certain portions of the land I checked.

Testimony of James H. Rowe, for Plaintiff.

[34] JAMES H. ROWE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

(By Mr. MAURY.)

The WITNESS.—I am the defendant in this case;

(Testimony of James H. Rowe.)

I have been an officer of the Salmon Land Company; I don't remember exactly for how long; since it was organized—about the date of that note. I was one of the parties who signed the note; I signed it as secretary of the corporation, and gave it to Mr. Boomer, husband of Laura A. Boomer, I think; I understood at the time that he was her agent. I cannot tell how much of the note has been paid; I think the amount stated in the suit is correct—in her bill of complaint; I have not checked up the amount but I think it is substantially correct. That all of the note has been paid except the sum of \$4,963.10, with interest—I think that is approximately correct—with interest from the 31st day of July, 1914. I don't know anything about that payment of \$659. That is the first I ever heard of it, to-day. It is not a payment by our authority; I don't know for what purpose it was paid; I never heard of it until a few minutes ago. I have the records of the Salmon Land Company here, also a copy of the articles of incorporation. I was present at a meeting of April 19, 1910, authorizing the mortgage— [35] a meeting of the board of directors. Pages 15, 17 and 19 of this book are correct minutes of that meeting.

Mr. ROOTE.—We admit the making of that note. It is all in your complaint and it is admitted; it shows that there was a meeting and that they authorized this transaction by all of the directors, of which Mr. Rowe was one.

Mr. MAURY.—Very well.

(Testimony of James H. Rowe.)

The WITNESS.—The Salmon Land Company is not possessed of any property; it has not had any property since this property was sold in Lemhi County, Idaho—I would say at the date alleged in the complaint. In the annual statements since then we mention a debt of the corporation of \$5,000, that the amount of existing debts of said corporation is \$6,500.00; that is in the statement of date Jan. 10, 1916; that is this deficiency judgment and the accrued interest, and the costs of that suit; there are no other debts except money that is owed to me personally that I make no claim for.

Mr. MAURY.—Is it admitted, Mr. Roote, that there has never been any subscription to stock greater than \$10,000?

Mr. ROOTE.—I think so.

Cross-examination.

(By Mr. ROOTE.)

The WITNESS.—I am acquainted with H. H. Boomer, the husband [36] of Mrs. Boomer, who lives in Spokane. In this whole transaction the Salmon Land Company did business with an agent of Mrs. Boomer, who was H. H. Boomer. The land in question was sold to a syndicate in Butte by Peter McKenny, an associate of Boomer's and the price was agreed on, and we paid approximately ten thousand dollars, plus a mortgage that then existed on the property, a loan that had been made by Boomer to McKenny.

Mr. MAURY.—That is not in the pleadings—no

(Testimony of James H. Rowe.)

contention of that kind, nor is the authority of any agent of Mrs. Boomer shown sufficient for the transaction, and it would be absolutely immaterial.

Mr. ROOTE.—I would like to have Mr. Rowe explain the whole transaction.

The COURT.—You may proceed. If the evidence is not entitled to any weight it will not be given any.

Mr. MAURY.—We are not assenting to it. We are not to be deemed as assenting to it.

The COURT.—Certainly.

The WITNESS.—We paid to McKenny and Boomer approximately ten thousand dollars—I don't remember the exact amount; it was figured out at so much per acre, and we assumed the indebtedness that McKenny owed to Boomer. This is one of the several transactions that we had, and the development that we expected to ensue did not occur in the Salmon land and we had several talks with the stockholders of the syndicate [37] and with Boomer, and I told Mr. Boomer, and in fact he agreed in front of the Finlen Hotel that there need be no redemption.

Mr. MAURY.—We object, that that was not in writing.

The WITNESS.—I think I have it in writing, but I will have to hunt it up.

Mr. MAURY.—We specifically make that objection, a transfer of land must be in writing.

Mr. ROOTE.—It was with reference to a foreclosure.

(Testimony of James H. Rowe.)

The COURT.—Objection overruled.

(Exception noted by plaintiff.)

The WITNESS.—In any event we made no appearance in this case whatever—in this case in Lemhi County. Mr. Boomer told me Mr. Whitcomb suggested the record would be clearer if there was a foreclosure. Another separate company had a very bitter dispute later. I am trying to explain why we have the difference of opinion now. An attorney, A. C. Sherry down there, appeared without any authority from us, and in this case had no authority from the Salmon Land Company to appear; we did not think there was any necessity for it, and it was only long afterwards that I learned of the fact that this deficiency judgment was taken, and that I was sued personally. I knew nothing of any deficiency judgment prior to being sued. My transaction in buying the land was all with Mr. Boomer, representing his wife. We met in front of the Finlen Hotel—these matters run over several months, [38] and I had a talk about the matter; there were two corporations; the other corporation contested the case very seriously and was a much larger case. I told Boomer that the people who were interested in this syndicate would abide by my advice, and that I would suggest that we simply return the land and that they were ten thousand dollars ahead; he said that was all right, and that he would have it done that way, and in carrying out that understanding, with him we turned over possession of the ranch to

(Testimony of James H. Rowe.)

him as agent of his wife; I don't know how long he had possession of the land before he commenced the foreclosure proceedings, but we had nothing to do with the property afterwards, and his man McKenny put someone in charge there; they had someone appointed trustee under their Idaho law. The only thing further that I knew of it was when I was served long afterwards in this suit personally; we had been resting secure in the belief that they had agreed to take the land back and wipe the sale off; this suit was a couple of years afterwards. Nobody made any claim on me. The matter was talked over several times with Boomer; in fact, I think I can find letters to that effect.

Redirect Examination.

(By Mr. MAURY.)

The WITNESS.—I don't remember exactly when the original [39] suit was started; I was talking about the suit to foreclose; I have been sued twice in this court; I think the first suit was two years ago last January—about two years and a half ago. When it came time to file the annual statement I saw Mr. Roote and he had some correspondence with Whitcomb, and as there was a deficiency judgment he told me we had better put it in our annual report. Attorney Roote told me I had better put in approximately that amount—\$5,075.00. I had a man named Hall who attended to all of the Salmon land business and I guess I sent to Salmon for the information; I was satisfied that that was correct; that was the only debt that was alluded to—this deficiency judgment.

**Testimony of E. W. Whitcomb, for the Plaintiff
(Recalled).**

[40] E. W. WHITCOMB, a witness heretofore called and sworn on behalf of the plaintiff, recalled for further direct examination,
(By Mr. MAURY.)

The WITNESS.—The title of that court is the Sixth Judicial District Court of the State of Idaho, for the County of Lemhi, and it is a court of record and has a seal and a clerk; I know the clerk and his deputies. I am acquainted with the signature of W. W. Simmons; I have seen him write frequently; that is his genuine signature. That is W. W. Simmons' signature on the certificate of Plaintiff's Exhibit 2. That is the seal of that court. That is W. W. Simmons' signature where it appears on all of plaintiff's exhibits, and that is the seal; he is ex-officio recorder of the county. The duties of taking care of court papers and deeds are in the hands of the same officer; he is recorder and the clerk of that court. That is the genuine signature of W. W. Simmons on Plaintiff's Exhibit 6 and also the seal of that court; and that is his signature and the seal of the court on Plaintiff's Exhibit 3.

Cross-examination.

(By Mr. ROOTE.)

The WITNESS.—I was attorney for the plaintiff in the case in the Idaho court entitled Laura A. Boomer, plaintiff, [41] against Salmon Land Company et al., and was perfectly familiar with the

(Testimony of E. W. Whitcomb.)

proceedings in the case at the time, and I think I am now; there might be something I would want to refresh my memory on; the judgment was one by default as I recall it; the demurrer was filed and overruled and they refused to answer further. The Salmon Land Company appeared in that case. I compared those records a few days ago. The decree shows that there was a default judgment, but the Salmon Land Company appeared there by Mr. A. C. Sherry; I cannot remember whether that was upon the understanding that that was to save the cost of the publication of summons.

Mr. MAURY.—We object to that as not plead in the answer, and no claim is made in the answer that there was any extraneous agreement.

(Objection overruled.)

Mr. MAURY.—We make this objection merely to show that we do not consent.

The WITNESS.—I am under the impression that the understanding was that Mr. Sherry would file a demurrer for the Land Company, that the demurrer would not be argued, that it would be overruled and then no answer would be put in—that he was to make an appearance to save the expense of service, and the record shows that when the demurrer was overruled he failed or refused to file an answer; as a matter of fact he did not file an answer, but I think there was another reason for it; there was another case pending in [42] which Mr. Rowe was interested, and that both companies had no existence

(Testimony of E. W. Whitcomb.)
in that state, and that he could not do anything further if he wished to; that is my impression. Then the court appointed a trustee to represent the non-resident corporation, and the trustee filed a demurrer which was not argued; the demurrer was overruled, leave granted to answer by the next day and he refused to answer; I can remember that; I can tell the circumstances from that as I got it from the trustee.

Testimony of H. H. Boomer, for the Plaintiff.

[43] H. H. BOOMER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

(By Mr. MAURY.)

The WITNESS.—My name is H. H. Boomer; I am the person spoken of as the agent of Mrs. Laura Boomer; I am her husband. She is a citizen of the State of Washington and has been since this suit was commenced. Before this sheriff's sale, my wife did not own that land or any part of it.

Cross-examination.

(By Mr. ROOTE.)

The WITNESS.—Before the purchase of this land by the Salmon Land Company it was owned by Mr. McKenny, and Mr. McKenny had given and executed a mortgage to my wife for about the same amount that is in the mortgage in this case. Mr. McKenny owned the land and had given to Mrs. Boomer a mortgage for a large sum of money, some-

(Testimony of H. H. Boomer.)

thing like twenty thousand dollars, and that the Salmon Land Company that Mr. Rowe represented, and his associates, bought the ranch from Mr. McKenny and agreed to pay Mrs. Boomer,—that they were to assume the mortgage; they took [44] up the mortgage that McKenny gave and gave us a new note and mortgage.

[45] That there were introduced in evidence seven (7) exhibits, all being documentary and numbered respectively from one (1) to seven (7).

Exhibit One consists of certified copy of the articles of incorporation of Salmon Land Company. It was subscribed by the incorporators among which was the defendant, James H. Rowe, on April 8th, 1910, two other directors were named as incorporators making three in all. The name of the corporation was set forth there as being Salmon Land Company. Among other purposes it was set forth that it was formed to buy, own, sell, mortgage, and lease lands, real estate, water rights, etc., and to engage in any other business that may be considered necessary; its principal place of business was therein described as Butte, Silver Bow County, Montana; its term of existence was to be twenty (20) years; the number of its directors was to be three; the amount of the capital stock was set forth as being Fifty Thousand (\$50,000.00) Dollars, divided into Five Thousand (5,000) shares of the par value of Ten (\$10.00) Dollars, per share; the amount actually subscribed was, William Lawlor, one (1) share fully paid; James H. Rowe, one (1) share, fully

paid; Jesse M. Hall, one (1) share fully paid.

Exhibit One also contained the Annual Report of the said corporation filed January 20th, 1912. It set forth its name and principal place of business; its capital [46] stock was Fifty Thousand (\$50,000.00) Dollars; the amount actually paid in in cash Ten Thousand (\$10,000.00) Dollars; the amount of existing debts of the corporation is Twenty Thousand Five Hundred Twenty and 75/100 (\$20,520.73) Dollars; that the names of the directors were J. K. Heslet, James H. Rowe and Charles Cady; that James H. Rowe was its Secretary and Treasurer. This report is not signed by James H. Rowe.

Said Exhibit One also contained Annual Report filed January 20th, 1913, of the said corporation. There was no change in the report except that the debts were placed at Twenty-three Thousand Three Hundred Ninety-three and 50/100 (\$23,393.50) Dollars, and its directors were George McCutcheon, Charles Caddy and J. H. Rowe. Mr. Rowe, is set forth as Secretary and Treasurer.

Exhibit One also contained Annual Report filed January 10th, 1915, the report is the same as the other reports except that the amount of existing debts is placed at Five Thousand Seventy-five (\$5,075.00) Dollars, and Jesse M. Hall, had succeeded George McCutcheon on the Board of Directors.

Exhibit One also contained Annual Report of the 15th day of January, 1916, filed with the County Recorder. It is the same as the other reports, ex-

cept that there was the following words added, the amount of capital stock issued in payment of property is none; the existing debts placed at Six Thousand (\$6,000.00) Dollars; and the [47] following words were placed in this report, "This corporation has ceased to be a going concern and has ceased (to?) voluntarily incur financial obligations because of its insolvency." This annual report of Jan. 15, 1916, is not signed by James H. Rowe.

Exhibit One also contained annual statement of Salmon Land Company, filed January 10th, 1916, the directors are Charles Cady, Jesse M. Hall, James H. Rowe; the amount of existing debts are placed at Six Thousand Five Hundred (\$6,500) Dollars, and the following words appear in it over the signature of James H. Rowe, "This corporation has ceased to be a going concern and has ceased to voluntarily incur financial obligations because of its insolvency."

All of the said papers in Exhibit One were duly certified to be true and correct copies of papers on file with the County Clerk and Recorder of Silver Bow County, Montana, and bore the County Seal, the seal of his office.

Exhibit Two was a certified copy of a Judgment-roll in the cause of Laura A. Boomer, Plaintiff, vs. Salmon Land Company. All of the papers in the Judgment-roll were entitled in the District Court of the Sixth Judicial District of Idaho in and for the County of Lemhi, Laura A. Boomer, Plaintiff, vs. Salmon Land Company, and F. A. Bennett, Defendants (it bore no signature or attestation of any

Judge), but it bore the seal on the certificate of the Clerk of the said District Court and the certificate recited, "That it is a full, true and complete copy of the Judgment-roll in [48] said case." Each paper in this exhibit was objected to by defendant for the reason that it bears no certificate of the Judge that the person certifying thereto is or was the clerk or that the certificate of such clerk is in due form.

That the first paper in the said exhibit was a complaint alleging the debt and note to be the sole and separate property of the plaintiff; incorporation of Salmon Land Company; and a copy of a promissory note for Twenty Thousand Five Hundred Twenty and 73/100 (\$20,520.73) Dollars, of date April 14th, 1910, payable at First National Bank of Butte, Montana, to the plaintiff with interest at eight (8%) per cent per annum and signed Salmon Land Company by Charles Cady, President, and James H. Rowe, Secretary, it recited that a mortgage deed had been given, the interest had not been paid on the note and that the note was due for the entire sum. It asked foreclosure and a deficiency judgment. An ordinary form of mortgage was attached as an exhibit, reciting that it was optional with the mortgagee to consider the whole of the principal sum expressed in said note as immediately payable and due if the interest was not paid. The exhibit also contained a general demurrer of the defendant in said suit. The Salmon Land Company by Attorney A. C. Cherry, on the grounds that the complaint does not state facts sufficient to constitute a cause of action; it recites an order overruling said demur-

rer; there appears in addition an amended complaint in the said Judgment-roll; it recites a judgment foreclosing the said mortgage, finding that conditions thereof were not fulfilled; that the defendant Salmon Land Company [49] was indebted together with all the interest from April 14th, 1911, and an attorney's fee and awards judgment for the sum of Twenty-four Thousand Eight Hundred Ninety-eight and 50/100 (\$24,898.50) Dollars, and Two Hundred Fifty (\$250.00) Dollars attorney's fee, and decrees that if the amount bid for the property be not sufficient to pay the judgment that the Sheriff certify such deficiency to the Clerk and that it be docketed as a personal judgment; it shows that the judgment was signed December 30th, 1913, filed January 3, 1914.

Exhibit Three is a return of the Sheriff of Lemhi County, Idaho, showing that there was a deficiency due on the said judgment on January 31st, 1914, of Four Thousand Nine Hundred Sixty-three and no/100 (\$4,963.10) Dollars after selling all the property described in the mortgage. It shows an order of sale under said judgment and sets forth a copy of the decree and is certified by the Clerk of the said District Court of the Sixth Judicial District of Idaho, with the seal of the court, but without any signature of the Judge.

Exhibit Four is a Sheriff's Deed on Foreclosure, conveying to Laura A. Boomer by Thomas J. Stroud, Sheriff of Lemhi County, all of the land described in the mortgage; it is of date February 27, 1915, and

with the proper number of revenue stamps of the United States on it.

Exhibit Five shows that it is a certified copy of a deficiency [50] judgment docketed by the Clerk of the said District Court; it bears the seal of the Court; it has no certificate of the Judge; it shows deficiency judgment entered against Salmon Land Company in favor of Laura A. Boomer of date February 4th, 1914, amount Four Thousand Nine Hundred Sixty-three and 01/100 (\$4,963.01) Dollars, and a partial satisfaction of Six Hundred Fifty-nine and 39/100 (\$659.39) Dollars, filed July 6th, 1915.

Exhibit Six is a certified copy of the same mortgage from Salmon Land Company to Laura A. Boomer, said mortgage has been heretofore set forth.

Exhibits 3, 5 and 6 were objected to for the same reasons as Exhibit 2 above set forth.

Exhibit Seven is a copy of the minutes of a meeting of the Board of Directors of Salmon Land Company; it is certified to have been filed in the Office of the County Recorder in Lemhi County, Idaho, over the signature of James H. Rowe, Secretary, and recites among other things that the mortgage of Twenty Thousand Five Hundred Twenty and 75/100 (\$20,520.73) Dollars was authorized by the said Board of Directors; all of them voted in favor of it, and to secure a promissory note of the Company in the like amount.

CERTIFICATE.

I, George M. Bourquin, Judge of the above-entitled court, do hereby certify that the foregoing statement is true, complete and properly prepared;

that in so far as it purports to contain the substance of the exhibits it contains all of such substance as is material in any wise to a full determination [51] of this cause on appeal, though abbreviated, it contains in substance all of the evidence introduced at said trial and the said statement is hereby approved and ordered filed as part of the record for the purpose of the appeal herein.

Dated this 12 day of Sept., A. D. 1917.

BOURQUIN,
Judge.

The foregoing record may be settled as true and correct.

J. A. POORE,
Atty. for J. H. Rowe.

[Endorsed]: Title of Court and Cause. Condensed Statement of Evidence. Recd. at Clerk's Office, Aug. 30, 1917. Geo. W. Sproule, Clerk. By H. H. Walker, Deputy. Approved and certified and filed Sept. 12, 1917. Geo. W. Sproule, Clerk.

JOHN O. DAVIES,
MAURY and WHEELER,
Solicitors for Complainant.

[52] And thereafter, on the 30th day of August, 1917, Praeceptum for Transcript of Record was filed herein, which is as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

LAURA A. BOOMER,

Plaintiff,

vs.

JAMES H. ROWE,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of record to be filed in the *United Circuit Court of Appeals* for the Ninth Circuit, pursuant to an appeal allowed in the above-entitled cause and to incorporate into such transcript of record the following and no other papers or exhibits, to wit:

1. The plaintiff's bill of complaint.
2. The defendant's motion to dismiss bill of complaint.
3. The answer to the bill of complaint.
4. The decision of the Court by memorandum opinion filed on the 1st day of August, 1917.
5. The decree of the Court rendered pursuant thereto.
6. Plaintiff's assignment of errors.
7. The bond on appeal.
8. The citation on appeal, with admission of service.

[53] 9. The condensed statement of evidence.

And that the same be duly certified by you as required by law and the rules of the court; and that you further state in your certificate under seal, cost of the record and by whom paid.

JOHN O. DAVIES,
MAURY and WHEELER,
Attorneys for Plaintiff.

Service of the foregoing Praecipe acknowledged and copy thereof received this 30 day of August, 1917.

J. A. POORE,
Attorneys for Defendant.

[Endorsed]: Title of Court and Cause. Praecipe for Transcript of Record. Filed Aug. 30, 1917. Geo. W. Sproule, Clerk. By H. H. Walker, Deputy.

[54] Clerk's Certificate to Transcript of Record.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 54 pages, numbered consecutively from 1 to 54, inclusive, is a true and correct transcript of the pleadings, decree, opinion of the Court, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the praecipe of the appellant for said record on appeal, including said praecipe, and of the whole thereof, as appears from

the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Fifteen 50/100 Dollars and have been paid by the appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Butte, Montana, this 21st day of September, 1917,

[Seal]

GEO. W. SPROULE,

Clerk United States District Court, District of Montana.

[Endorsed]: No. 3053. United States Circuit Court of Appeals for the Ninth Circuit. Laura A. Boomer, Appellant, vs. James H. Rowe, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed September 25, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

